IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 20604 of 2007(C)

AGAINST THE ORDER IN IA 3516/06 IN
OS.1569/2005 of III ADDL. M.C.,THRISSUR

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PETITIONER:

TRESIAMMA, W/O CHALAKKAL DAVIS,
CHURAKKATTUKARA DESOM, PUZHAKKA VILLAGE,
THRISSUR, P.O.AMALANAGAR-683553, THRISSUR DIST.

BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

RESPONDENT:

MADHAVI AMMA, W/O GOVINDANKUTTY,
EZHUTHACHAN, ETTILA VALAPPIL,
CHURAKKATTUKARA DESOM, PUZHAKKAL VILLAGE,
P.O.AMALANAGAR-683553, THRISSUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.20604 OF 2007

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Dated this the 5th day of July, 2007

JUDGMENT

This writ petition is preferred against the order of the III Addl.Munsiff's Court, Thrissur in I.A.No.3516 of 2006 in O.S.No.1569/2005. The defendant in the case filed an application to consider the question of res judicata as a preliminary issue. But the court refused that prayer on the ground that res judicata being a mixed question of law and facts cannot be decided as a preliminary issue. Unfortunately the learned Addl.Munsiff has not stated about the facts. It is true that the question of res judicata is a mixed question of law and facts and it is not a pure question of law. It is also true unless the issue of law which does not require any evidence to prove it can be treated as a preliminary issue. If the principles contained in Order XIV Rule 2(2) are satisfied the issue on res judicata is capable of being decided on the basis of undisputed facts emerging from the pleadings, it is the duty of the court to decide the said issue as a preliminary issue. Order XIV Rule 2(2) deals with a situation where the matter can be tried as a preliminary issue if there is a bar to the

suit created by any law for the time being in force. There may be factual disputes which may have to be decided first to apply the principles of res judicata. In such cases the court cannot consider it as a preliminary issue and the amendment to Order XIV of the Code of Civil Procedure in 1976 gives a discretionary power to the court. Prior to the amendment it was mandatory and subsequently it is discretionary. A reading of the order passed by the learned Munsiff does not reflect the fact that without evidence this issue cannot be decided. So I feel the order under challenge is liable to set aside and the matter has to be reconsidered by the learned Munsiff in the light of observations mentioned by me above after hearing both sides.

Therefore the order under challenge is set aside and the IIIrd Addl.Munsiff's Court is directed to decide the matter afresh after hearing both parties in detail and also on the principles which they may like to argue on this question.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-